

IDEA–Reauthorized Statute¹

DISCIPLINE

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. This document addresses provisions of IDEA regarding the alignment between IDEA and No Child Left Behind, referred to in this document as the Elementary and Secondary Education Act (ESEA) of 1965, which will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Adds new authority for school personnel.

School personnel may consider any unique circumstances on a case-by-case basis when deciding to order a change in placement for a child with a disability who violates a student conduct code.

[615(k)(1)(A)]

2. Establishes a new standard for manifestation determinations.

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency (LEA), parent and relevant members of the Individualized Education Program (IEP) team (as determined by the parent and LEA) shall review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine if conduct was:

- Caused by, or was in direct and substantial relationship to, the child's disability; or
- A direct result of the LEA's failure to implement the IEP.

[615(k)(1)(E)(i)]

3. Adds a new provision when there is a determination that a behavior was a manifestation of the disability.

If the LEA, parent and relevant members of the IEP team ... determine that the conduct was a manifestation of the child's disability, the IEP team shall:

- Conduct a functional behavioral assessment and implement a behavioral intervention plan for the child; or
- If a behavioral intervention plan has been developed, review the existing plan and modify it as necessary to address the behavior.

If the behavior is a manifestation of the child's disability, the child is returned to the placement from which he or she was removed, unless the parent and LEA agree otherwise. [615(k)(1)(F)]

4. Establishes a new standard for special circumstances.

A school is permitted to remove a child with a disability to an alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:

- Carries or possesses a weapon to or at school, on school premises, or to or at a school function under jurisdiction of a state educational agency (SEA) or LEA;

- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA.

[615(k)(1)(G)]

5. Adds a new definition.

Serious Bodily Injury: defined in USC 1365(g) to mean a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or faculty. [615(k)(7)(D)]

6. Placement during appeals.

When an appeal under Section 615(k)(3) has been requested by either the parent or the LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period provided for in Section 615(k)(1)(C), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. [615(k)(4)(A)]

7. Establishes a timeline for expedited hearings for placement during appeals.

The SEA or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested, and shall result in a determination within 10 school days after the hearing. [615(k)(4)(B)]

8. Revises the standard for a basis of knowledge for children not yet eligible for special education and related services.

An LEA is deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred, a:

- Parent expressed concern in writing to an administrator or a teacher;
- Parent of the child has requested an evaluation of the child pursuant to Section 614(a)(1)(B); or
- Teacher or other school or LEA personnel expressed specific concerns about a pattern of behavior demonstrated to an administrator.

[615(k)(5)(B)]